

## **ORDINANCE NO. 276**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TIOGA, TEXAS, MAKING IT UNLAWFUL FOR CERTAIN SEX OFFENDERS TO RESIDE WITHIN 1,000 FEET OF PREMISES WHERE CHILDREN GATHER; PROVIDING EXCEPTIONS; PROHIBITING PROPERTY OWNERS FROM RENTING REAL PROPERTY TO CERTAIN SEX OFFENDERS; PROVIDING FOR A PENALTY; PROVIDING FINDINGS OF FACT AND OTHER MATTERS RELATED THERETO**

**WHEREAS**, the City of Tioga is a General Law City of the State of Texas having authority to utilize police power regulation for the health, safety and general welfare of the citizens of the City; and

**WHEREAS**, the City Council is concerned about the numerous and recent occurrences whereby sex offenders convicted of sexual offenses involving children have been released from custody and repeat the unlawful acts for which they had been originally convicted; and

**WHEREAS**, the City Council finds that establishing a policy to restrict the property available for residence of sex offenders will provide better protection for children in the City of Tioga; and

**WHEREAS**, Article 42.12(13B) of the Texas Code of Criminal Procedure provides a 1,000 foot safety zone for children as a condition for probation for those convicted of certain sexual offenses; and

**WHEREAS**, the City Council of the City of Tioga has determined that it is an exercise of good government to adopt this ordinance for the health, safety and welfare of the children of Tioga;

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TIOGA, TEXAS:**

### **SECTION 1. TIOGA REGULATION OF SEX OFFENDER RESIDENCY**

It is the intent of this ordinance to serve the City's compelling interest to promote, protect and improve the health, safety and welfare of the citizens of the City by creating areas around locations where children regularly congregate in concentrated numbers wherein certain registered sex offenders and sexual predators are prohibited from establishing temporary or permanent residency.

### **SECTION 2. DEFINITIONS**

The following words, terms and phrases when used in this section, shall have the meanings ascribed to them in this Subsection, unless the context of their usage clearly indicates another meaning.

**Permanent residence** means a place where the person abides lodges or resides for 14 or more consecutive days.

**Temporary residence** means a place where the person abides, lodges or resides for a period of 14 or more days in the aggregate during any calendar year and which is not the person's permanent address, or a place where the person routinely abides, resides or lodges for a period of 4 or more consecutive or nonconsecutive days in any month and which is not the person's permanent residence.

### **SECTION 3. SEX OFFENDER RESIDENCY PROHIBITION; PENALTY; AND EXCEPTIONS**

(1) If A person is required to register on the Department of Public Safety's Sex Offender Database because of a violation involving a victim who was less than sixteen (16) years of age, it is unlawful for that person to establish a permanent residence or temporary residence within 1,000 feet of any premise where children commonly gather, including a playground, school, day care facility, public or private youth center, or public park, as those terms are defined in Article 481.134 of the Health and Safety Code of the State of Texas. It shall be prima facie evidence that this chapter applies to such a person if the person's record appears on the Database and the Database indicates the victim was less than sixteen (16) years of age.

(2) For the purpose of determining the minimum distance separation, the requirement shall be measured by following a straight line from the outer property line of the permanent Or temporary residence to the nearest property line of the premises where children commonly gather, as described herein, or in the case of multiple residences on one property, measuring from the nearest wall of the building or structure occupied or the parking/driveway, whichever is closer to the nearest property line of the premises where children commonly gather, as described herein. A map generally depicting the prohibited areas described in this ordinance shall be prepared by the Tioga Police Department. The City shall review the map at least annually for changes, and it will be available at the Tioga Police Department.

### **SECTION 4. PENALTY.**

Any person violating a provision of this section shall be guilty of a misdemeanor, and upon conviction shall be subject to a fine not to exceed the amount of Five Hundred (\$500.00) Dollars.

### **SECTION 5. EXCEPTIONS.**

Nothing in this ordinance shall be interpreted to modify or reduce the State's child safety ban. A person, as described in subsection (1), residing within 1,000 feet of those places



where children commonly gather does not commit a violation of this chapter if any of the following apply:

(a) The person established the permanent or temporary residence and has complied with all the sex offender registration laws of the State of Texas, prior to the date of the adoption of this ordinance.

(b) The person was a minor when he/she committed the offense and was not convicted as an adult.

(c) The person is a minor.

(d) The premises where children commonly gather, as specified herein, within 1,000 feet of the person's permanent or temporary residence was opened after the person established the permanent or temporary residence and complied with all sex offender registration laws of the State of Texas.

(e) The person proves that the information on the Database is incorrect and that, if corrected, this chapter would not apply to the person.

#### **SECTION 6. PROPERTY OWNERS PROHIBITED FROM RENTING REAL PROPERTY TO SEX OFFENDERS; PENALTY**

(1) It is unlawful to let or rent any place, structure or part thereof, manufactured home, trailer, or other conveyance, with the knowledge that it will be used as a permanent residence or temporary residence by any person prohibited from establishing such permanent residence or temporary residence pursuant to the terms of this chapter, if such place, structure or part thereof, manufactured home, trailer, or other conveyance is located within 1,000 feet, as defined in Section 3(1), of any premises where children commonly gather, including a playground, school, day care facility, video arcade facility, public or private youth center, or public park, as those terms are defined in Article 481.134 of the Health and Safety Code of the State of Texas.

(a) Penalty. Any person, firm or corporation violating a provision of this section shall be guilty of a misdemeanor, and upon conviction shall be subject to a fine not to exceed Five Hundred (\$500.00) Dollars.

#### **SECTION 7. SEVERABILITY.**

Should any section or part of this ordinance be held unconstitutional, illegal, or invalid, or the application to any person or circumstance for any reasons thereof ineffective or inapplicable, such unconstitutionality, illegality, invalidity, or ineffectiveness of such section or part shall in no way affect, impair or invalidate the remaining portion or portions thereof; but as to such remaining portion or portions, the same shall be and remain in full force and effect and to this end the provisions of this ordinance are declared to be severable.

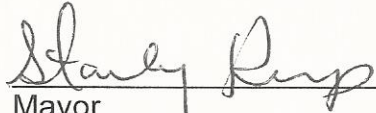
**SECTION 8. EFFECTIVE DATE.**

This ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of law,

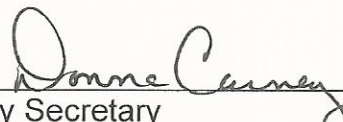
**SECTION 9. OPEN MEETINGS.**

It is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by law.

PASSED AND APPROVED on this the 9th day of February, 2009.

  
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Mayor

ATTEST:

  
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City Secretary